PUBLIC PROSECUTOR

v.

FOO KOH SEN & ANOR.

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMED J
[CRIMINAL TRIAL NO. 9/1980]
4 JULY 1983

CRIMINAL LAW AND PROCEDURE: *Sentence - Amended charge of committing culpable homicide - Accuseds pleaded guilty - Sentence with effect from date of trial - Whether just and proper.*

Both the accuseds had pleaded guilty on an amended charge of committing culpable homicide, an offence under s. 304 of the Penal Code by causing the death of one Lee Fook Seng. They were each sentenced to 10 years' imprisonment upon which they have appealed.

The facts of the case were wholly admitted without dispute by both the accuseds which were as follows:

On 26 June 1978, both the accuseds who were at Jalan Siew Nam, Johore Bahru, saw the deceased parking his motorcar No. JW 9080 along the road and decided to steal the motorcar. In approaching the motorcar, accused No. 1 took out his pistol and pointed it at the deceased who was then seated on the driver's seat and ordered him to move to his left on the passenger's seat. At this stage, accused No. 2 entered the motorcar and sat on the rear seat behind the deceased. Accused No. 1 handed his pistol to accused No. 2 and ordered him to guard the deceased, whereupon accused No. 1 took the steering wheel and drove the car away. On the way, both accuseds relieved the deceased of his cash amounting to RM60, his gold ring and gold bracelet. At the 9½ m.s. Jalan Kota Tinggi, the deceased was taken out from the motorcar to about 150 yards into the jungle and tied to a tree guarded by accused No. 2 with a gun in his hand. The deceased managed to free himself, lunged at accused No. 2 and ran away. Both accuseds gave chase and on the order of accused No. 1, 2 shots were fired by accused No. 2, one of which hit the deceased on his head. The deceased fell, injured and both accused left the deceased there to die.

On 11 October 1978, both the accuseds were arrested in Kelantan. On 22 October 1978, they led the police party to the scene of killing, where skeletal remains of the deceased were recovered. The deceased was duly identified and a post-mortem examination was carried out by Dr. Dharamvir Singh who discovered a gun-shot wound on the skull of the deceased and certified that the deceased had died of shock and haemorrhage as a result of the wound.

Held:

[1] The Court was satisfied that both the accuseds had committed the offence with which they were charged and punishable under s. 304 of the Penal Code. The offence fell under the 1st limb of s. 304 Penal Code in that both the accuseds had intended to cause the deceased's death.

[2] It was a most heinous offence committed with cruelty and without compunction by both the accuseds for a human life just for the purpose of stealing a motorcar from the deceased. Such a crime calls for a substantial custodial sentence.

[3] There were no mitigating factors to consider in favour of either the accuseds and the sentence of 10 years' imprisonment with effect from the date of trial was just and proper in the circumstances of the case.

[Accused sentenced to 10 years' imprisonment with effect from the date of trial.]

Legislation referred to:
Penal Code, s. 304

For the prosecution - Ahmad b. Haji Maarop, DPP.
For the 1st accused - Elyas Majeed; M/s. Elyas Majeed & Co.
For the 2nd accused - R.K. Menon; M/s. R.K. Menon & Co.

JUDGMENT

Mohd. Yusoff Mohamed J:

Both the accuseds pleaded guilty on an amended charge of committing culpable homicide, an offence under s. 304 of the Penal Code by causing the death of one Lee Fook Seng. They were each sentenced to 10 years' imprisonment upon which they now appeal.

The facts of the case wholly admitted without dispute by both the accuseds showed that at about 10a.m. on 26 June 1978, both the accuseds were at Jalan Siew Nam of Johore Bahru, when they saw the deceased parking his motor-car No. JW 9080. They decided to steal the motor-car from the deceased and in approaching the motor-car, accused No. 1 took out his pistol and pointed it at the deceased who was then sitting on the driver's seat. Accused No. 1 ordered the deceased to move to his left on to the passenger's seat. At this stage the second accused entered the motor-car and sat on the rear seat behind the deceased. At this point, the first accused handed his pistol to the 2nd accused and ordered accused No. 2 to guard the deceased, whereupon accused No. 1 took the steering wheel and drove the car away.

Both accuseds proceeded along Jalan Kota Tinggi and on the way they relieved the deceased of his cash amounting to RM60 and his gold ring and gold bracelet. On arriving at 9½ milestone Jalan Kota Tinggi, accused No. 1 stopped the car there and both of them took out the deceased from the car and walked him for about 150 yds. away from the road into the jungle. While at that place accused No. 1 tied the deceased to a tree and accused No. 2 kept watch over him with the gun in his hand. All of a sudden at that stage the deceased managed to free himself. He lunged at accused No. 2 and ran away. Both the accuseds gave chase and at the same time accused No. 1 ordered accused No. 2 to shoot the deceased. Accused No. 2 fired 2 shots, one of which hit the deceased on his head. The deceased fell, injured and both the accuseds left the deceased there to die.

On 11 October 1978, both the accuseds were arrested at Rantau Panjang, Kelantan. They were brought back and on 22 October 1978 they led the police party to the scene of the killing, where skeletal remains of the deceased were recovered. The deceased was duly identified and a post mortem examination was carried out by Dr. Dharamvir Singh. The doctor discovered a gun-shot wound on the skull of the deceased and certified that the deceased died of shock and haemorrhage as a result of the wound.

On these facts I am satisfied that both the accuseds had committed the offence with which they were charged and punishable under s. 304 of the Penal Code in that they had acted together in causing the death of the deceased Lee Fook Seng and each of them showed a common intention to cause the deceased's death.

The offence falls under the 1st limb of s. 304 Penal Code in that both the accuseds had intended to cause the death of the deceased. They had taken the deceased to an isolated place in the jungle and to leave him there to die a slow death by tying him to a tree where nobody has access to the place. But as fate would have it, the deceased broke loose and in consequence he suffered a quick death by a gun-shot fired by the accused.

To my mind this is a most heinous offence committed with cruelty and without compunction by both the accuseds for a human life just for the purpose of stealing a motor-car from the deceased. Such a crime, in my opinion, calls for a substantial custodial sentence.

There is no mitigating factors to consider in favour of either the accuseds and again in my opinion the sentence of 10 years' imprisonment with effect from the date of trial is just and proper in the circumstances of the case.

Also found at [1983] 2 CLJ 96